

The Death Penalty Should Not Continue To Exist:

Abolition And Replacement Of The Death penalty In China's Criminal Justice System

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Abstract: At present, many countries around the world have abolished the death penalty or no longer impose the death penalty, while China still maintains a relatively high scale of death sentences relative to these countries; in practice, the death penalty has many problems, such as undermining human rights and leading to the irreparable harm of unjust and false convictions, etc. As China's socialist rule of law and the study of human rights develop, the question of whether or not to abolish the death penalty, and whether or not China can develop a system that can replace the death penalty, will also need to be further researched in depth.

Keywords: Death penalty; Alternative punishment; Human rights; Chinese criminal

Introduction

With the development of society, economy and culture, the retention or abolition of the death penalty is controversial in the academic world. In the world, there are most countries have abolished the death penalty, and there are also countries that retain the death penalty but have not been sentenced to death for a long time. But the death penalty still exists in our country, of course, for the system of the death penalty in our country, and there is also a controversy on the existence of the abolition of the death penalty. Supporters of the death penalty argue that it is an effective deterrent for crime and serves as a form of justice for victims and their families. They also believe that certain crimes are so heinous that the perpetrators do not deserve to continue living.

On the other hand, opponents of the death penalty argue that it is morally wrong to take another person's life, regardless of the crime they have committed. They also point out that the death penalty disproportionately affects marginalized groups and can lead to innocent people being executed. Additionally, there is evidence that the death penalty does not serve as a deterrent for crime. States without the death penalty often have lower murder rates than those with it, and studies have shown that states with the highest execution rates also have the highest murder rates. Another aspect of the controversy is the risk of executing innocent individuals. Despite advancements in forensic science, there have been cases where people on death row were later found to be innocent and exonerated. This highlights the possibility of grave injustices being carried out in the name of the death penalty. Further complicating the issue is the cost associated with carrying out capital punishment. The lengthy appeals process and specialized legal representation required for death penalty cases can be financially burdensome for states.

Based on what has been said above, this paper takes the position that China should abolish the death penalty system, and offers five ways in support of this position: development of the death penalty system in China, implementation of the death penalty system at home and abroad, the death penalty and the purpose of punishment, the dilemma of the death penalty system in China, alternative systems to the death penalty. Section 1 addresses the development of China's death penalty system from pre-Qin to modern China. Section 2 addresses the history of the survival and abolition of the death penalty system in the Americas, Europe and Asia by comparison. Section 3 addresses the purpose of the death penalty as a punishment. Section 4 addresses the dilemma of China's death penalty system. Section 5 address the alternatives to the death penalty. And the final section offers a summary and a conclusion in support of the paper's position that the death penalty system in China should be abolished.

1. History and development of the death penalty system in China

The practice of capital punishment, or the death penalty, has a long history in China dating back to ancient times. It has undergone significant changes and developments over the centuries, influenced by cultural, political, and legal factors.

1.1 Ancient China (Pre-Qin dynasty)

In ancient China, the death penalty was used as a means of punishing severe crimes such as murder, treason, and rebellion. The earliest known death penalty law was the “Law of the Twelve Tables” created during the Zhou dynasty (1046-256 BCE). This law prescribed the death penalty for 12 different crimes, including murder, kidnapping, and robbery.

1.2 Imperial China (Qin dynasty - 1911)

Throughout imperial China, the use of the death penalty continued to be prevalent. However, the methods and severity of punishment varied depending on the dynasty and the ruler’s ideology. During the Tang dynasty (618-907), for example, the death penalty was rarely used, and alternative forms of punishment such as exile were favored. During the Qin dynasty (221-207 BCE), the first unified empire in Chinese history, the death penalty was widely used as a tool to maintain social order and punish dissent. The ruler of the Qin dynasty, Emperor Shihuangdi, is famous for his harsh use of the death penalty, which included methods such as dismemberment, beheading, and boiling alive. Under the Ming dynasty (1368-1644), the laws became more codified, and specific criteria were established for sentencing someone to death. The Qing dynasty (1644-1911) followed suit, and the judicial system became even more formalized and systematic in its approach to implementing the death penalty. However, the death penalty remained a common form of punishment for various crimes throughout imperial China.

1.3 Republican Era (1912 - present)

When the Republic of China was founded in 1912, a new criminal code was introduced, which did away with some of the more brutal methods of execution, such as dismemberment and boiling alive. However, the death penalty remained a prevalent form of punishment, and its use intensified during periods of political instability.

After Mao’s death in 1976, there was a shift towards a more regulated use of the death penalty. In 1979, a new criminal code was introduced, reducing the number of crimes punishable by death from 44 to 33. In the following decades, there were further reforms aimed at limiting the use of the death penalty and ensuring fair trials for defendants.

Current Status of the Death Penalty in China Today, the death penalty remains a legal form of punishment in China, but it is used much less frequently than in the past. In 2020, China ranked first in terms of the number of executions carried out.

However, this number has been steadily decreasing in recent years due to efforts to reform the justice system.

In 2007, China enacted a law that requires all death sentences to be reviewed by the Supreme People’s Court before being carried out. This review process has resulted in a lower rate of executions and has led to more stringent standards for evidence and trials.

1.4 Sub-Conclusion: trends in the decreasing use of the death penalty

The development of the death penalty in China has undergone significant changes throughout history. From its harsh and brutal use in ancient times to its regulation and decreasing use today, the death penalty reflects the changing attitudes and values of Chinese society. While it remains a controversial issue, it is clear that efforts are being made to reform and regulate its use in modern China. Overall, the scope of the use of the death penalty in China and the frequency of its occurrence in sentences is gradually decreasing.

2. The history of the survival and abolition of the death penalty system in the Americas, Europe and Asia by comparison

The history of the death penalty system in the Americas, Europe and Asia has been marked by both its survival and eventual abolition. While there are variations in the use and implementation of capital punishment among these regions, there are also some common themes in the evolution of their approaches.

2.1 Americas

In the early colonial period, the death penalty was widely used in the Americas as a means of maintaining order and enforcing social control. This was particularly evident in the harsh punishments imposed by the Spanish and Portuguese empires on enslaved Africans and

indigenous populations. However, in the 18th and 19th centuries, there were movements for reform and abolition of the death penalty in the United States and Canada, driven by ideas of human rights and the Enlightenment philosophy of rational justice.

Despite these efforts, the use of capital punishment continued into the 20th century, with several high-profile cases bringing attention to the flaws and inequalities in the legal system. In 1972, the US Supreme Court temporarily struck down the death penalty as unconstitutional, citing its cruel and unusual nature. However, it was later reinstated in 1976, with stricter guidelines for its application. Over time, several states in the US have abolished the death penalty, and today it is only legal in some states.

2.2 Europe

Europe has a long and complicated history with the death penalty. Beccaria had advocated the abolition of the death penalty in his work, but of course it was not taken seriously at the time. Throughout medieval times, it was widely used as a form of punishment for crimes ranging from treason to theft. In the late 18th century, during the Age of Enlightenment, many European countries began to question the legitimacy of capital punishment and the potential for miscarriages of justice.

One key event that spurred the move towards abolition in Europe was the French Revolution, where the use of the guillotine became a symbol of state brutality. In 1867, the Grand Duchy of Tuscany abolished the death penalty, becoming the first European state to do so. This sparked a wave of abolition in other countries, with Russia, Norway, and Germany all following suit in the late 19th century.

Today, the death penalty is banned in all European Union member states. However, Belarus remains the only country in Europe that has not completely abolished it.

2.3 Asia

The use of the death penalty has been deeply ingrained in Asia's legal systems for centuries. In many Asian societies, it was seen as a necessary form of punishment to maintain social order and deter crime. This mindset continued well into the 20th century, with countries such as China, Japan, and India still practicing capital punishment.

However, there have also been movements for reform and abolition in some Asian countries. In 1947, India abolished the death penalty except for extraordinary cases such as wartime offenses. Similarly, Nepal abolished the death penalty in 1990, citing humanitarian principles. Today, the death penalty is still actively used in several Asian countries, including China, North Korea, and Iran.

2.4 Sub-Conclusion

In conclusion, the history of the survival and eventual abolition of the death penalty in the Americas, Europe, and Asia reflects the ongoing debate surrounding its use and effectiveness as a form of punishment. While progress has been made in reducing its use, there remain differing views on its fairness and necessity. As societies continue to evolve and reassess the value of human life, it is likely that the debate will continue and perhaps lead to further changes in the use of capital punishment worldwide.

3. The purpose of the death penalty as a punishment

3.1 The purpose of the punishment

The purpose of punishment in criminal law is to promote justice and maintain social order.

It involves imposing penalties on individuals who have violated the laws of society, with the aim of preventing future wrongdoing and deterring others from committing similar offenses.

One of the main goals of punishment in criminal law is retribution. This means that offenders should face consequences for their actions in proportion to the harm they have caused. By punishing an individual for their crime, it serves as a form of just punishment and satisfies the need for revenge or "an eye for an eye" mentality.

Another purpose of punishment is deterrence. By imposing penalties on criminals, it sends a message to potential offenders that there will be consequences for their actions. This is known as general deterrence, where punishment acts as a warning to society at large. On an

individual level, it can also serve as a specific deterrence, meaning that the punishment will deter that particular offender from repeating their offense in the future.

Punishment also has a rehabilitative purpose in criminal law. This involves addressing the underlying issues that led an individual to commit a crime and providing them with the necessary resources and support to reform and become law-abiding citizens.

This approach aims to address the root causes of criminal behavior and reduce the likelihood of reoffending.

Furthermore, punishment can serve as a form of incapacitation. By incarcerating or otherwise restricting the freedom of convicted criminals, it prevents them from committing further crimes while serving their sentence. This helps protect society from dangerous individuals and maintains public safety.

Lastly, punishment in criminal law also serves a symbolic purpose. It reaffirms the values and norms of society, reflecting the seriousness of certain offenses and reinforcing the idea that crime will not be tolerated. It also provides closure for victims and their families by acknowledging the harm that was done and holding the perpetrator accountable for their actions.

In conclusion, the purpose of punishment in criminal law is multifaceted. It serves to promote justice, maintain social order, and protect society from further harm. By imposing penalties on offenders, it aims to deter future criminal behavior while also providing opportunities for rehabilitation and societal reintegration.

3.2 The death penalty does not fully serve the purpose of punishment

As mentioned above, one of the purposes of punishment is rehabilitation and reintegration. However, the permanent and irreversible nature of the death penalty renders it incapable of achieving these objectives. Once a criminal is executed, there is no opportunity for them to serve their time, reflect on their actions, and regret their wrongdoings. Consequently, the opportunity for rehabilitation is also forfeited, as the criminal is unable to undergo any educational or rehabilitative programs aimed at addressing the root causes of their actions.

In other words, when a criminal is executed, they lose their right to life and are unable to be rehabilitated through education or other forms of rehabilitation, preventing them from reintegrating into society. As a result, the goals of punishment and rehabilitation cannot be achieved.

4. The lack of fairness and impartiality in the application of death penalty procedures

There are several reasons why the death penalty should be abolished in China.

First and foremost, the use of the death penalty in China is highly controversial and raises serious concerns about human rights.

Furthermore, there is a lack of transparency and due process in China's judicial system, leading to a high risk of wrongful convictions and miscarriages of justice. This is especially concerning when considering that the death penalty in China can be imposed for a wide range of crimes, including non-violent offenses such as drug trafficking and economic crimes. Without proper checks and balances, innocent individuals may face the ultimate punishment for crimes they did not commit.

In addition, studies have shown that the death penalty does not act as an effective deterrent to crime. In fact, countries that have abolished the death penalty have not seen an increase in crime rates. Instead, focusing on rehabilitation and addressing root causes of crime has been proven to be a more effective approach to reducing crime rates.

Moreover, the death penalty goes against fundamental principles of human rights and dignity. Every individual has the right to life, and the use of the death penalty violates this basic human right. It also denies the possibility of rehabilitation and redemption for individuals who may have committed a crime, disregarding the potential for positive change and growth.

Lastly, the death penalty disproportionately affects marginalized and vulnerable populations, including those with low socioeconomic status and minority groups. Studies have shown that individuals from these groups often do not have access to quality legal representation, increasing their likelihood of receiving a death sentence.

In conclusion, the death penalty in China should be abolished due to its violation of human rights, lack of transparency and due process, ineffectiveness as a deterrent, disregard of rehabilitation, and disproportionate impact on marginalized populations. It is time for the Chinese government to reconsider the use of this outdated and inhumane punishment and instead focus on alternative forms of justice that

prioritize fairness, accountability, and rehabilitation.

5. Alternative method to the death penalty

One alternative method to the death penalty is life imprisonment without parole. This means that instead of being sentenced to death, the individual would spend the rest of their life in prison with no chance of release.

This alternative allows for punishment, as the individual will still be serving a significant amount of time in prison, but it avoids the irreversible nature of the death penalty. Although life imprisonment also undermines human rights to a certain extent, it can be seen as a reasonable transitional alternative to the direct death penalty.

Another alternative is restorative justice. This approach focuses on repairing the harm caused by the crime and facilitating healing for both the victim and the offender. It involves holding the offender accountable for their actions through various means such as restitution, community service, and rehabilitation programs. This approach seeks to address the root causes of criminal behavior and aims to reduce recidivism rates.

Some advocates also suggest implementing a system of graduated sanctions,

where the severity of punishment increases based on the severity of the offense committed. This would allow for more flexibility in sentencing and would not automatically lead to the death penalty for the most serious crimes.

Additionally, some suggest increasing access to mental health treatment as ways to prevent violent crimes from occurring in the first place. By addressing underlying issues such as access to mental illness, it is believed that society can reduce the number of heinous crimes and therefore eliminate the need for the death penalty.

Ultimately, alternatives to the death penalty seek to address the concerns raised about capital punishment while still holding offenders accountable for their actions. These methods also prioritize rehabilitation and healing, rather than solely focusing on retribution.

6. Summary and Conclusion

The focal point of this paper is to present a compelling argument for the abolition of China's death penalty system. In light of this, five key ways are identified to support this position, each

highlighting a different aspect of the issue at hand. These five ways have been carefully chosen to provide a comprehensive and thorough overview of the complexities and controversies surrounding the death penalty system in China. Through this multifaceted approach, this paper aims to shed light on the pressing need to dismantle the current system and to call for alternative means to address crimes and uphold justice within the Chinese society.

The first section of this paper delves into the development of China's death penalty system, stretching back to the pre-Qin era and tracing its evolution to modern China. In the second section, the paper looks beyond the borders of China and examines the history of the death penalty in contrasting regions, specifically, the Americas, Europe, and Asia. Through this comparative analysis, it becomes clear that the death penalty has been scrutinized and challenged in many parts of the world, with some countries having abolished it entirely. The third section shifts the focus to the purpose of the death penalty as a form of punishment. While the death penalty has traditionally been justified under the premise of deterrence, retribution, and rehabilitation, this section delves into the underlying issues and contradictions surrounding these justifications. It argues that the objectives of the death penalty, while perhaps having been relevant in centuries past, no longer align with the evolving legal, ethical, and moral demands of a modern society. Section four tackles the dilemma of China's death penalty system, which has been subject to intense criticism and scrutiny on numerous fronts. The final section of this paper offers alternative systems to the death penalty that can be implemented in China. It explores the successes and failures of alternative systems in other countries and presents a compelling case for their implementation in light of the shortcomings of the death penalty system. These alternative systems include life imprisonment without parole, restorative justice, increasing access to mental health treatment and restorative justice.

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